



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL CASE NO. 17 OF 2018

REPUBLIC ..... PROSECUTOR

VERSUS

STEPHEN JUMA OUMA ..... ACCUSED

RULING

1. **Stephen Juma Ouma** is charged with an offence of murder contrary to section 203 as read with section 204 of the Penal Code.
2. The particulars of the offence are that on the night of 10<sup>th</sup> and 11<sup>th</sup> day of December 2017, at **Bubango** area in **Bunyala** Sub-county of **Busia** County, jointly with others not before court murdered **Nicholas Nalumwa Kundu**.
3. The prosecution case was that after the body of the deceased was found lying along the road at Bubango junction, the accused was mentioned as one of the culprits.
4. After the close of the prosecution case, the only issue for determination is whether a *prima facie* case has been established against the accused. The Court of Appeal in the case of **Ramanlal Trambaklal Bhatt vs. Republic (1957) E.A. 332 at 335**, defined a *prima facie* case in the following terms:

**It is may not be easy to define what is meant by a “prima facie case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.**

This is what is going to guide me in this case in finding whether the prosecution has established a case for the accused to be called upon to tender his defence.

5. P.C Solomon Wasilwa (PW6) was the investigating officer in this case. He testified that the accused was linked to the offence by Oliver Majimbo (PW3). This witness was declared hostile before he was eventually stepped down. Before he was stepped down the only relevant evidence he had adduced was that at midnight he had heard some noises. The investigating officer said that Oliver Majimbo (PW3) told him that he had witnessed the incident through a window. This was clearly hearsay. Other than being hearsay, it is doubtful how he could see the culprits through a window at midnight and be able to identify the person he purported was the accused. He never said what distance he was from the scene and what light helped him to recognize the alleged culprit. This is no evidence that any reasonable tribunal can rely on.
6. The other purported witness who claimed to have identified the accused was Beatrice Nabwire who was never called. We may never know what she would have testified to.
7. From the foregoing analysis of evidence on record, I find that the prosecution has failed to establish a *prima facie* case against the accused. I accordingly acquit him of the offence of murder under section 306 (1) of the Criminal Procedure Code. He is set at liberty unless if he is otherwise lawfully held.

**DELIVERED and SIGNED at BUSIA this 12<sup>th</sup> day of June, 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**